

RESOLUTION NO. R2014-003

A Resolution of the City Council of the City of Tumwater, Washington, approving and authorizing the Mayor to execute a Development Agreement with Sandy Investments, LLC.

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170 (1)); and

WHEREAS, City staff negotiated a development agreement with Sandy Investments, LLC, and a copy of that agreement is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, on March 4, 2014, the City Council held a public hearing, after public notice as required by law, on the Development Agreement with Sandy Investments, LLC;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUMWATER AS FOLLOWS:

Section 1. Findings. The City Council hereby finds the Development Agreement supports the public health, safety and welfare, and the best interests of the citizens of Tumwater for each of the reasons set forth in the development agreement recitals, which are hereby adopted as findings of fact.

Section 2. Conclusions of Law. Based on the Findings of Fact set forth in Exhibit "A" and Section 1 above, the Development Agreement is consistent with the criteria set forth in RCW 36.70B.170.

Section 3. Development Agreement. The City Council hereby authorizes the Mayor to enter into the Development Agreement attached as Exhibit "A" hereto, and to take all further and necessary action required by the Development Agreement.

Section 4. Severability. The provisions of this resolution are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this resolution or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the resolution, or the validity of its application to other persons or circumstances.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this resolution is hereby ratified and affirmed.

Section 6. Effective Date. This resolution shall be effective immediately, as provided by law.

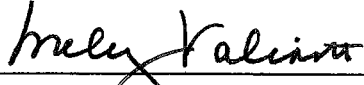
RESOLVED this 4th day of March, 2014.

CITY OF TUMWATER



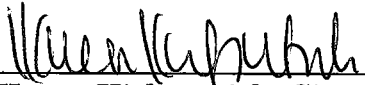
Pete Kmet, Mayor

ATTEST:



Melody Valiant, City Clerk

APPROVED AS TO FORM:



Karen Kirkpatrick, City Attorney

Resolution No. R2014-003

Exhibit "A"

**DEVELOPMENT AGREEMENT FOR PIONEER STREET IMPROVEMENTS
WITH SANDY INVESTMENTS, LLC**

THIS DEVELOPMENT AGREEMENT is entered into this 4th day of March, 2014, by and between the City of Tumwater, a Washington municipal corporation ("City"), and Sandy Investments, LLC, a Washington corporation ("Developer"). The Agreement relates to the future development of real property for two single family homes consisting of Parcels 59300200700 and 59300200800 located on Pioneer Street, in Tumwater, Washington, as shown in Attachment "A" ("Property") and includes the extension of the City's sanitary sewer and water utilities to serve said property, said extensions necessitating the repaving of a portion of the existing Pioneer Street, all as shown in Attachment "B" ("Project").

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170 (1)); and

WHEREAS, the City of Tumwater is a municipal corporation under the laws of the State of Washington with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, including the approval of land use plans and enter into a development agreement; and

WHEREAS, the Developer has control of real property consisting of Parcels 59300200700 and 59300200800 located on Pioneer Street in Tumwater, Washington; and

WHEREAS, a development agreement sets forth the development standards and other provisions that shall apply to, and govern the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, the Developer is required by the Tumwater Development Guide to extend City sanitary sewer and water utilities to serve the Project; and

WHEREAS, the utility extensions will extend along City right-of-way on Pioneer Street adjacent to other properties that are not currently served by City sanitary sewer or water utilities; and

WHEREAS, the utility extension work will include reconstruction and resurfacing of Pioneer Street within the limits of the project; and

WHEREAS, the City desires to avoid future disruption to the resurfaced Pioneer Street due to adjacent properties subsequently connecting to the available City sanitary sewer and water utilities; and

WHEREAS, the City's development standards do not require, as a condition of utility extension, that service laterals to properties adjacent to the utility extensions which are not currently connected to City utilities and are not under the control of the contractor be constructed at the time of extension; and

WHEREAS, the Developer in their pursuit of the work has requested and received bids for the utility service laterals to serve adjacent properties not controlled by the Developer for purposes of determining the actual cost of the utility service laterals; and

WHEREAS, the City and the Developer acknowledge that the reasonable cost borne by the Developer in constructing and installing said utility service laterals is \$34,700; and

WHEREAS, the City's development guidelines do not require the Developer to reconstruct the full structural section of Pioneer Street within the project limits; and

WHEREAS, the City and the Developer agree that reconstruction of the structural section of Pioneer Street in conjunction with the utility extension provides efficiencies and benefits to both the City and the Developer; and

WHEREAS, the Developer in pursuit of the work has requested and received bids for the reconstruction of the structural roadway section that is beyond their responsibility for purposes of determining the actual cost of the additional work; and

WHEREAS, the parties acknowledge that the reasonable cost borne by the Developer in constructing the additional structural roadway section is \$28,680; and

WHEREAS, after a public hearing held on March 4, 2014, based on the staff report, testimony and other evidence provided, the City Council finds the agreement supports the public health, safety and welfare and the best interests of the citizens

Development Agreement – Page 2 of 6

the citizens of Tumwater, and authorizes the Mayor to sign this Development Agreement with the Developer;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. The Project. The Project consists of the extension of City sanitary sewer and water utilities along Pioneer Street and reconstruction and resurfacing of Pioneer Street from Linwood Avenue to the north limits of the subject property for a length of approximately 545', to include sanitary sewer and water service laterals to properties abutting the extensions to include Parcels No's. 59300200100, 59300200300, 59300200400, 59300200500, 59300200600, 59300100200, 59300100400, 59300100300, 59300100500, 59300100600, 59300100700, 59300100800 and 59300100900 which are not under the control of the Developer in conformance with the Agreement, and as shown in Attachment "B".

Section 2. The Subject Property. The subject property proposed to be developed by the developer is located on Pioneer Street, Parcels 59300200700 and 59300200800 as shown in Attachment "A" attached hereto and incorporated herein by this reference.

Section 3. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement, and shall continue in force for a period of two (2) years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer.

Section 4. Development Standards. The Project shall comply with the development standards in effect at the time of engineering plan submittal including the requirements of the Tumwater Development Guide, except as may be otherwise modified by this agreement, or to the extent required by a serious threat to public health and safety.

Section 5. Minor Modifications. Modifications to the proposed development may occur during the buildout period. Minor modification from the exhibits attached hereto may be approved in accordance with the provisions of the City of Tumwater Municipal Code, (TMC) and shall not require an amendment to this Agreement.

Section 6. Further Discretionary Actions. Developer acknowledges that the existing land use regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of permit applications under SEPA. Nothing in this Agreement limits the authority or the obligation of the City to hold legally required public hearings, or limits the Development Agreement – Page 3 of 6

discretion of the City and any of its officers or officials in complying with or applying existing land use regulations. Nor does the Agreement alter or restrict City's condemnation or other police power authority.

Section 7. Costs.

(a) Developer shall bear all costs for the planning, permitting, design, and construction of the sanitary sewer and water extensions, utility service laterals, and reconstruction and resurfacing of Pioneer Street.

(b) The City of Tumwater shall contribute actual costs of construction not to exceed Thirty Four Thousand Seven Hundred Dollars (\$34,700) for extension of the utility service laterals to properties not under the control of the Developer and Twenty Eight Thousand Six Hundred Eighty Dollars (\$28,680) for the reconstruction of the structural section of Pioneer Road which is beyond the responsibility of the Developer, for a total not to exceed the cost of Sixty Three Thousand Three Hundred Eighty Dollars (\$63,380).

(c) The Developer shall provide the City with all quantities of material used, receipts, invoices and cancelled checks for review and confirmation of the actual costs of construction by the City before payment is made.

(d) No additional payment beyond that specified will be made by the City regardless of the actual final costs borne by the Developer.

(e) Payment of the City's contribution will be made to the Developer within thirty (30) days after the Project quantities and cost are reviewed, accepted by, and the improvements are dedicated to the City of Tumwater.

Section 8. Prevailing Wages. The Developer agrees to pay Prevailing Wages in the performance of all work to which the City is providing a financial contribution to include the construction of the utility service laterals and construction of the roadway structural section of Pioneer Street as described previously.

Section 9. Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws and regulations of the State of Washington. Venue shall be in Thurston County Superior Court.

Section 10. In the event any legal action or special proceeding is commenced by any person or entity other than a party to the Agreement to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer. In such event, Developer shall hold the City harmless from and defend the City from all costs and expenses

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incurred in the defense of such lawsuit or individual claims, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 11. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the successors in interest of Developer. The Agreement shall be recorded against the Property, and shall be a covenant and/or equitable servitude running with the land.

Section 12. Entire Agreement. The Agreement contains the entire agreement of the parties. There are no oral or written understandings not expressly included herein. No testimony or evidence of any such understandings or representations shall be admissible to determine Agreement terms.

Section 13. Severability. If any portion of the Agreement is declared unlawful, the remainder of the Agreement shall continue in full force and effect.

Section 14. No Third Party Beneficiary. The Agreement is entered into for the parties' sole benefit and their successors and assigns. No other person shall have any right of action based on the Agreement.

Section. 15. Counterparts. The Agreement may be executed in several counterparts. All exhibits are terms of the Agreement as though fully recited herein.

Section 16. Bankruptcy. If the Agreement is affected by any future bankruptcy proceeding, upon Developer's request, the parties shall jointly apply to the Bankruptcy Court for withdrawal to Thurston County Superior Court for resolution of the matter.

Section 17. Non-Enforcement not Waiver. Failure by any party to enforce the Agreement shall not be construed as a waiver of any right to do so.

Section 18. Authority. The undersigned covenant and represent that they are fully authorized to enter into and execute the Agreement.

DATED this _____ day of _____, 2014.

* * * Signatures and Notarization on Next Page * * *

CITY:

CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501



Pete Kmet, Mayor

DEVELOPER:

SANDY INVESTMENTS, LLC

P.O. Box 4094
Tumwater, WA 98501



Dan Sandy, Managing Partner

ATTEST:

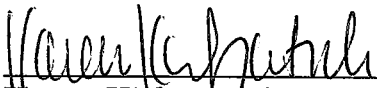


Melody Valiant, City Clerk

COUNTY OF Thurston)ss.

I certify that I know or have satisfactory evidence that Dan Sandy is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Managing Partner of Sandy Investments, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

APPROVED AS TO FORM:



Karen Kirkpatrick, City Attorney

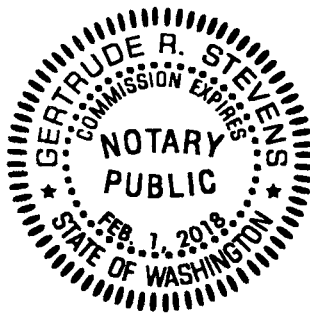
Dated: 2/5/14



(Signature)

Notary Public in and for the State of Washington. My appointment expires:

2/1/18



(Seal or Stamp)

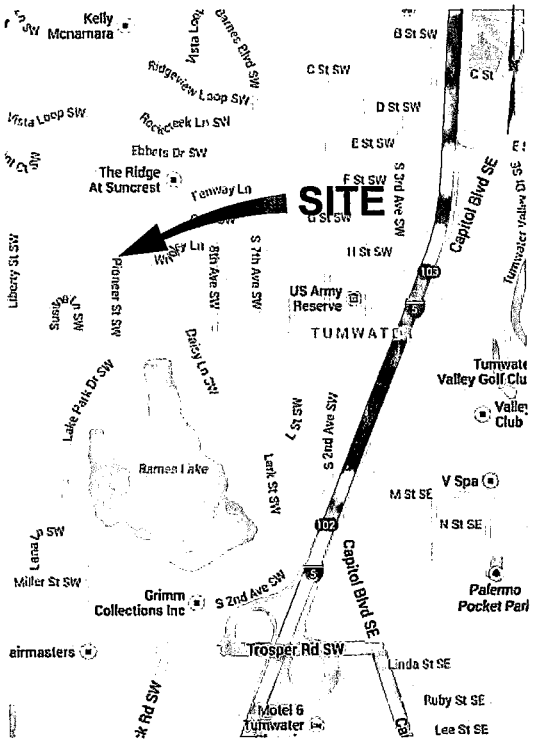
STATE OF WASHINGTON)

ATTACHMENT "A"

SEC. 34 T. 18N R. 2W W.M.



SITE MAP
SCALE: N.T.S.



Tumwater Vicinity Map
SCALE: N.T.S.

Legend



Subject Property Extending Utilities



Properties Effected

City of Tumwater
Public Works Department
Engineering Division
555 Israel Road SW, Tumwater, WA 98501
(360) 754-4140 Voice, 754-4142 Fax

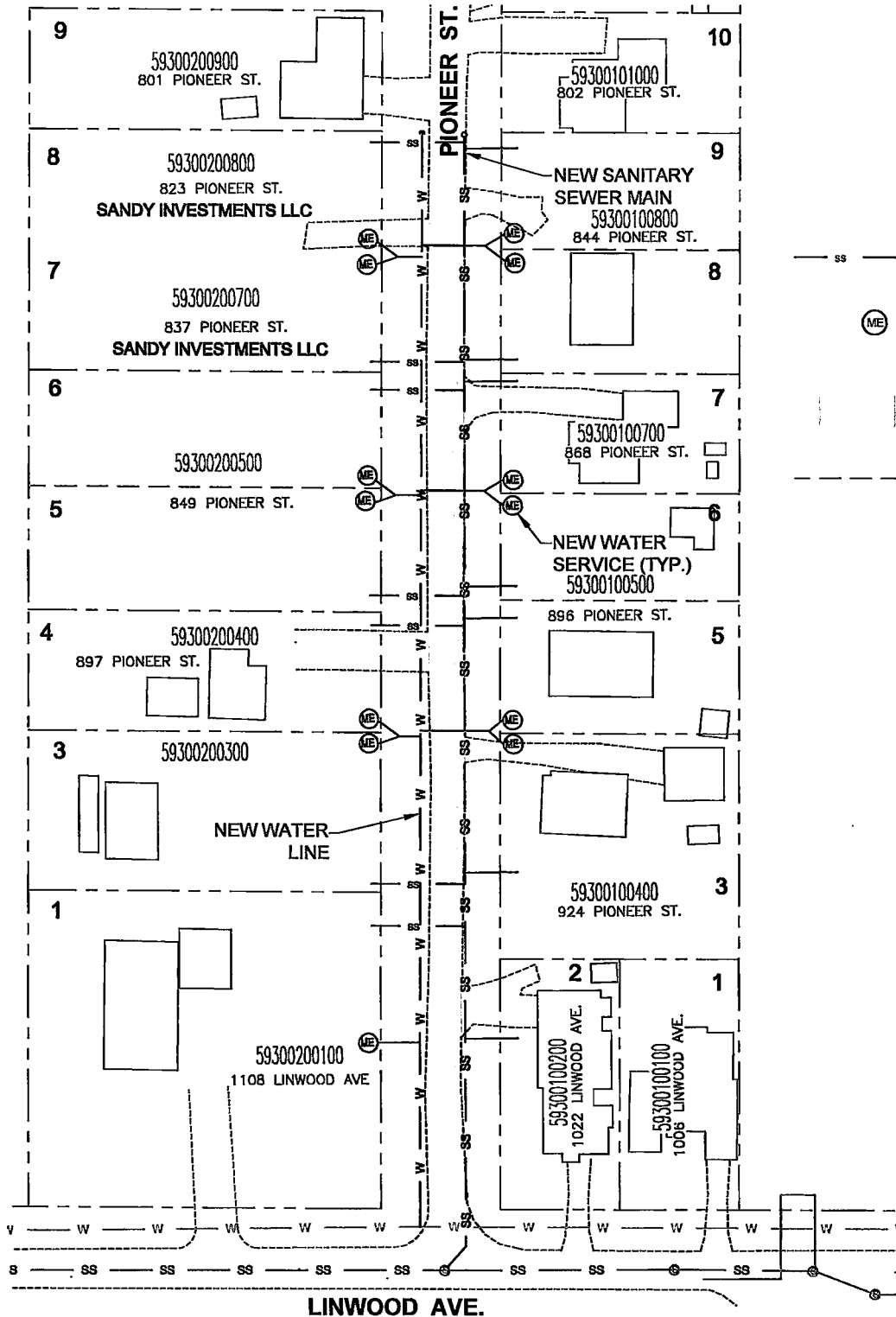
DESIGNED: XXX	SCALES:	JOB NUMBER
DRAWN: XXX	HOR. AS NOTED	ST XXXXX
CHECKED: XX	VERT. AS NOTED	DATE
APPROVED: XXX	FIELD BOOK XX	12/13

PIONEER STREET UTILITY EXTENSION
SITE & VICINITY MAPS

DRAWING NUMBER
1
SHEET 1 OF 2

ATTACHMENT "B"

SEC. 34 T. 18N R. 2W W.M.



Proposed Utility Extension
SCALE: N.T.S.

City of Tumwater Public Works Department Engineering Division 555 Israel Road SW, Tumwater, WA 98501 (360) 754-4140 Voice, 754-4142 Fax	DESIGNED: XXX	SCALES:	JOB NUMBER	PIONEER STREET UTILITY EXTENSION		DRAWING NUMBER
	DRAWN: XXX	HOR. AS NOTED	ST XXXXX	UTILITY PLAN		2
	CHECKED: XX	VERT. AS NOTED	DATE			SHEET 2 OF 2
	APPROVED: XXX	FIELD BOOK XX	12/13			